IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 767 OF 2000

Bayadabai @ Bhagirathi Fulaji Tate,]
Life Convict Prisoner, Yerawada Central]
Prison, Pune – 6.] .. Appellant (Ori. Accused)

Versus

The State of Maharashtra.]
(At the instance of Madha Police Station,]
Solapur.)] .. Respondent.

Mr. B.G. Tangsali, Advocate appointed for the appellant/accused.

Mrs. U.V. Kejriwal, A.P.P., for the respondent/State.

CORAM: V.G. PALSHIKAR &

ANOOP V. MOHTA, JJ.

DATED: 8TH OCTOBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant was tried and convicted by the Additional Sessions Judge, Solapur. This Appeal against the judgment and order dated 1st August, 1998, whereby, she was convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.200/- and, in default, to suffer one month' srigorous imprisonment. The learned Sessions Judge held that the appellant-accused, on 10th February, 1995, in the evening at village Anjangaon, committed the murder of her eight month son Samadhan by throwing him in a well.

2. The appellant married to PW1 – Pulaji Amburushi Tathe, five years before the date of incident. The appellant was frustrated because of the disturbed married life as PW1 – Pulaji was not treating her well. One son Samadhan (deceased) was born out of the said wedlock. As per the prosecution, appellant-accused left the matrimonial house along with Samadhan, on the pretext that she would go to village Loni for administering dose of medicine to Samadhan. On 10th February, 1995, in

the evening, she reached village Anjangaon and threw Samadhan, who was aged eight months, in the well situated in the land of PW2 – Ajinath Madhukar Naikhaware. Therefore, Samadhan died by drowning. The appellant-accused thereafter went to village Kumbhoj, Taluka Madha, District Solapur, to meet her cousin Sangita but she was not there at the relevant time. Therefore, she left the village Kumbhoj and went to Barsi and stayed at Barsi till she was arrested on 17th September, 1997. The appellant had denied the charges framed and pleaded “not guilty”. The appellant' sdefence was of total denial. The prosecution has led the evidence of 9 witnesses. There was no defence witness.

3. We have heard the learned Advocate appearing for the appellant and the A.P.P. For the State. We have also gone through the testimonies of all the witnesses and the record.

4. There is no dispute about the death of Samadhan, the son of the appellant-accused. The appellant has also admitted in her statement recorded under Section 313 of the Criminal Procedure Code, about the death of Samadhan. There is no eye witness to the incident. PW1 –

Pulaji, the father of the deceased has identified the dead body of Samadhan. Along with the dead body, which was floating in the well, the Dose Card (Exhibit-25) was found, which was issued by the Health Centre. PW7 – Jyotsana Narayan Jagdale, the Auxiliary Nurse (Midwife) who was working at Loni at the relevant time, she has deposed that in 1995, the said Card was issued to the appellant-accused. This witness has, therefore, identified the accused before the Court. Merely because PW7 identified the accused and also proved the issuance of the Dose Card in her handwriting, it cannot be inferred that it is the accused who had committed the murder of Samadhan and only because she must be having the custody of the eight month old suckling child. There is nothing to show that when the appellant-accused left the house, the child was with her. As per the prosecution case, there was no complaint that Samadhan was missing or was murdered by someone else. According to us, mere silence and not taking such action at the relevant time itself cannot be the reason to hold that the appellant was in guilt. The presumption and assumption cannot take place of the substantial evidence, specially in cases where there are no eye witnesses. The prosecution case that the appellant was frustrated because of disturbed marital life and ill-treatments by the

husband PW1 and, therefore, she had thrown her eight month old son in the well is not well founded motive. There is nothing on the record to suggest or to prove the motive, as alleged by the prosecution. This motive to kill her own eight month old son needs corroboration and positive evidence, which the prosecution, according to us, have failed to prove in the present case.

5. PW4 – Shivaji Manohar Waghmare was the cousin of the appellant. He deposed that the appellant had enquired about Sangita, but as Sangita was not available, she inquired about her arrival. The appellant-accused then, as alleged, confessed before him that she had thrown her male child in the well. Based on this extra-judicial confession before PW4 – Shivaji, the learned Judge has taken this as substantial evidence and convicted the appellant-accused. It is to be noted that in his cross-examination, this witness admitted that after one and half years of the incident, the Police recorded the statement of this witness. He identified the accused who came to his house in the night at village Kumbhoj. The incident was of 10th February, 1995, and the first statement of PW 4 was recorded on 15th February, 1995. His second statement was recorded on 21st September,

1997. There is no corroborative evidence to support the statement of this witness. The learned Judge, however, accepted this as an extra-judicial confession and the testimony of PW4 – Shivaji on the footing that this witness cannot be disbelieved as he had no grudge against the accused to depose falsely. This witness PW4 has deposed in his cross-examination that in spite of the information about the dead body of a small child found in the well, he did not inform the Police about the confession made by the appellant before him. It is also to be noted that while giving the first statement on 15th February, 1995, this witness did not give the name of the appellant. It is only in the second statement that he had informed the name of the appellant. This witness, according to us, is not reliable and appears to be a tutored witness. Therefore, the so-called extra-judicial confession, based on which the conviction has been imposed, is unsustainable. This witness also raises various doubts in the case of the prosecution.

6. PW5 – Sakharbai Pandurang Naiknaware, a resident of village Anjangaon deposed that about three and half years before, she had seen the accused at the S.T. Stand of Anjangaon with one small boy in her

arms. She further deposed that this appellant-accused asked her the way of village Kumbhoj. In her cross-examination, however, she was totally shattered and admitted in paragraph 9 that she was not sure that the woman who met her on that day was the appellant PW5 was not declared as hostile witness by the prosecution.

7. PW6 – Mathurabai Bhagwat Jadhav, a resident of Anjangaon deposed that she met the accused about three and half years before when the said witness was grazing cows in the lands abutting Anjangaon – Kumbhoj villages and the appellant had requested for water. This witness deposed that the child was with the appellant-accused at that time, but in her cross-examination she has admitted that her eye sight was weak and she did not see the face of the woman on that day in a proper manner. According to us, the prosecution has miserably failed to connect the appellant with the offence in question. In absence of eye-witnesses, such breaking links, according to us, raises serious doubts in the prosecution case.

8. We have also gone through the Police witnesses PW 8 – Vishnu

Sampat Bobade the ASI and PW 9 – Shankar Ramchandra Jirge – the PSI. The basic element, apart from the investigation, which the prosecution wants to canvass and prove is that the appellant was absconding at the material point of time. She was charge sheeted in her absence. The supplemental charge sheet was submitted after the arrest of the accused. The accused was arrested on 17th September, 1997.

9. For the reasons recorded above, we are of the view that such feeble testimonies of witnesses are not sufficient to prove the prosecution case in question to impose conviction. There is no eye witness to the incident. The circumstantial evidence, as referred above itself, is not sufficient to conclude, beyond reasonable doubt, that the appellant has committed this heinous crime of killing her own eight month old son, Samadhan. The motive, as alleged, also nowhere supports the prosecution case. There are various missing links in the chain of events of the circumstantial evidence to convict the appellant-accused. In view of this, there is merit in the Appeal.

10. The Appeal, therefore, is accordingly allowed. The judgment and

order dated 1st August, 1998, is quashed and set aside. The appellant be released forthwith if not needed for any other offence.

11. We quantify the fees to be paid to the Advocate appointed for the appellant at Rs. 750/- for this Appeal.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]